

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: COMPLAINT OF DOUGLAS PALS	DOCKET NO. FCU-2013-0009
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**ORDER GRANTING, IN PART, AND DENYING, IN PART,
REQUEST FOR CONFIDENTIAL TREATMENT FILED FEBRUARY 6, 2015, AND
RESPONDING TO MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS**

(Issued July 1, 2016)

BACKGROUND

On January 23, 2015, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed with the Utilities Board (Board) a report (Report) detailing what it learned from an investigation of issues relating to call completion problems experienced by consumers in rural areas of Iowa. In this particular proceeding, Mr. Douglas Pals filed a complaint with the Board in March of 2013 concerning attempted telephone calls that failed to complete among other problems. The Board docketed the complaint for further investigation and assigned the matter to its administrative law judge who conducted the proceeding and required OCA to file the Report.

OCA attached to its Report data response exhibits, including exhibits containing responses from Qwest Communications Company, d/b/a CenturyLink

QCC (CenturyLink).¹ OCA filed public and confidential versions of its Report. Certain portions of the Report refer to the data request responses CenturyLink provided to OCA. OCA redacted from the public versions of the Report and exhibits the information designated as confidential by CenturyLink.

**CENTURYLINK'S FEBRUARY 6, 2015,
REQUEST FOR CONFIDENTIAL TREATMENT**

On February 6, 2015, CenturyLink filed a request for confidential treatment of the information included in OCA's Report and exhibits that the company had designated as confidential. CenturyLink filed its request pursuant to Iowa Code §§ 22.7(3) and (6) and the Board's rule at 199 IAC 1.9(5)(a)(1) and (3). CenturyLink stated the information it designated as confidential was provided to OCA subject to a protective agreement among the parties. According to CenturyLink, it gave the information to OCA hoping to answer questions raised by the Board when docketing this case for formal proceeding.

CenturyLink argued the information qualifies for protection from public disclosure as trade secrets under Iowa Code § 22.7(3) or as a report to a governmental agency which, if released, would give advantage to competitors and serve no public purpose, under Iowa Code § 22.7(6). CenturyLink also asserted that much of the information is protected under Customer Proprietary Network Information

¹ During the pendency of this proceeding, Qwest Communications Company, LLC, d/b/a CenturyLink QCC, underwent an internal reorganization approved by the Iowa Utilities Board in SPU-2014-0002 and received approval of a name change to CenturyLink Communications, LLC, in SPU-2014-0008.

(CPNI) rules enacted by the Federal Communications Commission (FCC) at 47 U.S.C. § 222.

Instead of referring to specific parts of OCA's Report, CenturyLink identified the information for which it sought confidential treatment and reasons for doing so using the following categories: (a) trouble tickets opened by CenturyLink to address customer complaints (CenturyLink did not object to revealing the number of trouble tickets, but argued the tickets contain confidential CPNI or network routing information, public disclosure of which would give competitors an advantage and pose a risk to network security); (b) routing data and the identity of intermediate carriers (public disclosure of which would give competitors and intermediate carriers an economic advantage in negotiations and pricing and pose a network security issue); (c) financial impact of contract terms, including financial impact of removing certain carriers from the routing tables to certain numbers (public disclosure of which would give other carriers a competitive and economic advantage); (d) performance metrics of intermediate carriers (public disclosure of which would give advantage to competitors and could compromise network security); and (e) network management information, which the company states it maintains as confidential for competitive purposes and network security purposes (public disclosure of which would disadvantage the company and customers).

CenturyLink disputed OCA's assertion that the public should have access to the information the company designated as confidential. CenturyLink asserted it is most important for customers to know how to recognize call completion problems,

how to report such problems, and know who to notify if problems occur. In support of the request for confidential treatment, CenturyLink attached the affidavit of Mary M. Retka, CenturyLink's Director of Network Policy.

**OCA'S FEBRUARY 20, 2015, PARTIAL RESISTANCE AND
MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS**

On February 20, 2015, OCA filed a partial resistance to the request for confidential treatment and a motion requesting an order removing the confidentiality designations from certain redacted portions of OCA's Report. OCA resisted the request for confidential treatment of the redacted portions of Paragraphs 10-12, 15, 26-28 and 30 and Footnotes 4-6. OCA also requested that the Board issue an order requiring the removal of the confidentiality designations from these portions of the Report and from the redacted portions of Paragraph 19, which OCA stated were based on discovery responses from Bluetone Communications, LLC (Bluetone).

OCA did not resist CenturyLink's request for confidential treatment of the confidential exhibits. OCA also did not resist the request for confidential treatment of the redacted portions of Paragraphs 13, 14, and 24 of the Report.

OCA observed that CenturyLink did not specify the portions of the Report it requested be given confidential treatment, but asserted instead that everything redacted by OCA should be treated as confidential. OCA objected to the request for confidential treatment because there is a presumption of openness and disclosure. OCA. OCA argued that the failure of calls to complete is a significant issue of interest to the public that should be addressed in public filings.

With respect to CenturyLink's assertion that much of the information designated as confidential is subject to CPNI rules, OCA stated it attempted to avoid referring in the Report to CPNI by leaving out the telephone number to which a call was attempted, the "destination telephone number." OCA also stated that CenturyLink did not refer to any specific examples of CPNI in the Report.

OCA argued that CenturyLink's assertion that the most important information for customers is who to contact in the event of call failures is not an appropriate standard. According to OCA, one purpose of these proceedings is to find ways to prevent call failures; transparency gives companies involved in call routing an incentive to complete calls and thus is part of a solution. OCA explained that in preparing its Report, it redacted the information designated as confidential as required by the protective agreement. Once the Report was filed with the Board, however, it became a public document and CenturyLink has the burden of proving that the redacted information qualifies for confidential treatment.

OCA explained that Paragraphs 10-12, 15, 26-28, and 30 and Footnotes 4-6 contain information about call routing, use of intermediate carriers, the identities of intermediate carriers, problems associated with use of intermediate carriers, and the frequency of problems with specific intermediate carriers. OCA disputed CenturyLink's assertion that public disclosure of routing information would give CenturyLink's competitors an advantage in negotiations and pricing, emphasizing that because the routing sequence changes on an ongoing basis, the routing sequence used in 2013 is not likely to provide current competitive advantage.

In response to CenturyLink's assertion that the company takes great measures to protect routing information from disclosure, OCA countered that CenturyLink had not maintained the confidentiality of the identity of its intermediate carriers, citing to several places in the record of the other pending call completion cases where the identity of intermediate carriers used by CenturyLink was disclosed without objection from CenturyLink.²

OCA also disputed CenturyLink's assertion that routing practices should be confidential to ensure network security, arguing that CenturyLink failed to offer facts in support of this assertion. With respect to the redacted materials that are based on the content of trouble tickets, OCA argued that CenturyLink did not identify any specific CPNI and did not provide specific facts to support the assertion that the information is a trade secret.

OCA stated that Paragraph 19 contains information regarding the routing of calls by Bluetone, including the identity of an intermediate carrier used by Bluetone. According to OCA, Bluetone did not request confidential treatment of the information.

CENTURYLINK'S MARCH 20, 2015, REPLY

On March 20, 2015, CenturyLink filed a reply to OCA's partial resistance. CenturyLink reasserted its general position that under the broad reading of the term "trade secret" in Iowa Code § 550.2(4), the information designated as confidential in

² See OCA's February 20, 2015, partial resistance to request for confidential treatment, p. 8, n. 4, in which OCA identifies various places in the public record of the call completion cases where the identities of intermediate carriers used by CenturyLink were revealed without a request for confidential treatment from CenturyLink.

this case is the type of information businesses do not release without a compelling reason and which qualifies for protection from public disclosure. In support, CenturyLink cited *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 646-47 (Iowa 1995); *EFCO Corp. v. Symons Corp.*, 219 F.3d 734, 741 (8th Cir. 2000); and *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W. 2d 711, 714 (Iowa 1993). CenturyLink also argued that the types of service that a customer subscribes to and how such service is technically provided falls within the definition of CPNI in 47 U.S.C. § 222(h)(1).

In response to OCA's argument that public disclosure of the disputed information is necessary for the development of solutions to call completion problems, CenturyLink argued that disclosure of the information, which is highly technical, is not likely to lead to public understanding of the call completion problems.

CenturyLink provided a supplemental affidavit of Mary Retka addressing some of the parts of the Report for which it sought confidential treatment. CenturyLink also waived its claim for confidential treatment of Footnotes 4, 5, and 6, stating that these portions of the Report contain aggregated information, do not name specific carriers or reveal the specific content of trouble tickets, or are simply conclusory statements.

The supplemental affidavit contains the following statements in support of the parts of the request for confidential treatment which CenturyLink did not waive:

Paragraphs 10-11: CenturyLink stated that these paragraphs contain confidential trouble ticket information, information about CenturyLink's investigative processes, CPNI, and network routing information. CenturyLink stated it does not

disclose this information to the public and disclosure would damage the company's business operations and give advantage to competitors. CenturyLink also stated that some of the trouble ticket information identifies intermediate carriers that are not parties to this proceeding.

Paragraphs 12, 26, 28, and 29: According to CenturyLink, these paragraphs contain proprietary information about the routing of traffic which the company guards from disclosure. CenturyLink asserted the disclosure of this information would give economic advantage to competitors in negotiations and pricing. CenturyLink also stated disclosure of this information about how traffic is routed and the process for determining that routing pattern implicates network security. CenturyLink also stated the paragraph identifies intermediate carriers that are not parties to this proceeding.

Paragraph 15: CenturyLink stated that this paragraph contains information relating to performance metrics for intermediate carriers which CenturyLink guards from public disclosure. CenturyLink stated this information is competitively sensitive, identifies a specific intermediate carrier, and if released, would give economic advantage to competitors in negotiations and pricing.

Paragraph 30: CenturyLink stated this paragraph contains confidential communications between CenturyLink and an intermediate carrier regarding specific trouble ticket information. CenturyLink stated it takes care to maintain the confidentiality of this information. According to CenturyLink, disclosure would reveal confidential information about how the company routes its traffic and uses its network and would give competitors economic advantage in negotiations and pricing.

OCA'S MARCH 30, 2015, SUPPLEMENTAL RESPONSE

On March 30, 2015, OCA filed a supplement response and attached a confidential exhibit (Attachment 1) including excerpts from OCA's Report in this and other call completion cases involving CenturyLink. Attachment 1 specified which parts of the reports the parties agree can remain confidential, which parts the parties agree need not be kept confidential, and the parts which remain in dispute. OCA asserted that almost all of the issues in dispute relate to call routing, the identities of intermediate carriers, the contents of the trouble tickets, and what the company did to respond to the trouble.

OCA pointed out that CenturyLink repeatedly asserted that how it routes its traffic and uses intermediate carriers is information which, if disclosed, would give competitors and intermediate carriers an economic advantage in negotiations and pricing. OCA argued this assertion does not satisfy the standard for establishing that information is a trade secret. According to OCA, under *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714-15 (Iowa 1993), CenturyLink would need to show hard facts about how disclosure would put the company at a competitive disadvantage.

OCA argued there is no reason that disclosing the identity of intermediate carriers used to route calls, the nature of difficulties experienced when trying to route calls using intermediate carriers, or the number of times it was necessary to remove an intermediate carrier from a route would competitively disadvantage CenturyLink.

According to OCA, the call routing processes used by CenturyLink, especially the use of intermediate carriers, are used industry-wide. OCA also argued CenturyLink failed to show facts supporting the assertion that disclosure of the information would jeopardize network security. OCA emphasized that CenturyLink failed to show that the information included in OCA's Report regarding the company's use of intermediate carriers is a trade secret or otherwise entitled to protection from public disclosure.

DISCUSSION

The Board has reviewed CenturyLink's request for confidential treatment, OCA's resistance and request to remove confidentiality designations, CenturyLink's reply, OCA's supplemental response, and the relevant exhibits and paragraphs in OCA's Report. OCA did not resist CenturyLink's request for confidential treatment of the exhibits CenturyLink designated as confidential. The Board will grant CenturyLink's February 6, 2015, request for confidential treatment of the CenturyLink discovery response exhibits filed by OCA on January 23, 2015, pursuant to Iowa Code § 22.7(6).

Nor did OCA resist the request for confidential treatment of the redacted portions of Paragraphs 13, 14, and 24 of the Report. The Board will grant CenturyLink's request for confidential treatment of these portions of the Report pursuant to Iowa Code § 22.7(6).

To understand the extent to which CenturyLink's request for confidential treatment is still in dispute, the Board relied on CenturyLink's March 20, 2015, reply

(in which CenturyLink waived its objection to disclosure of Footnotes 4, 5, and 6 of OCA's Report) and OCA's March 30, 2015, supplemental response and its Attachment 1, in which OCA placed brackets around the material designated as confidential by CenturyLink.

The Board will grant or deny the request for confidential treatment of the information based on whether the information in dispute qualifies for confidential treatment under Iowa Code § 22.7(3) as a trade secret or under Iowa Code § 22.7(6) as a report to a government agency which, if released, would give advantage to CenturyLink's competitors and serve no public purpose, as explained below:

Paragraph 10: This paragraph contains a limited description of CenturyLink's process for investigating the call completion problems at issue in this proceeding, and identifies an intermediate carrier. The paragraph addresses in general terms the steps CenturyLink took to investigate problems at issue in this proceeding and identifies a known intermediate carrier that is participating in this proceeding. CenturyLink has not established that the information in this paragraph is a trade secret or otherwise entitled to confidential treatment. The Board will deny CenturyLink's request for confidential treatment of Paragraph 10.

Paragraph 11: This paragraph contains information from the contents of the intermediate carrier's response to CenturyLink's investigation. CenturyLink has not established that the information in this paragraph is trade secret information or otherwise entitled to protection from public disclosure. Much of the redacted information is included in the Board's order docketing this complaint for formal

proceeding. See *In re: Complaint of Douglas Pals*, “Order Docketing for Formal Proceeding and Assigning to Administrative Law Judge,” Docket No. FCU-2013-0009, issued July 1, 2013. The Board will deny CenturyLink’s request for confidential treatment of Paragraph 11.

Paragraph 12: This paragraph contains information about CenturyLink’s decision to remove intermediate carrier Bluetone from the routing to the number in question. The redacted portions of the paragraph identify the first five carriers in the routing sequence before CenturyLink made the change, some of which are not parties to this proceeding, and include OCA’s conclusions about the significance of Bluetone’s position in the route. The redacted information also specifies the carriers used in the route after the change. These redacted materials constitute trade secret information about CenturyLink’s routing process. The Board will grant CenturyLink’s request for confidential treatment of the redacted portions of Paragraph 12.

Paragraph 15: The redacted materials in this paragraph refer to information provided in another docket in which the number of occasions during a particular time period CenturyLink removed Bluetone from call routing due to a call completion complaint and also specify the number of times CenturyLink removed Bluetone from call routing because of a particular calling problem. The redacted material addresses CenturyLink’s response to a call completion problem. CenturyLink asserted that this information related to performance metrics applied to intermediate carriers. While the name of the intermediate carrier is not confidential, the remainder of the redacted materials appears to be competitively sensitive information about the company’s

process for responding to call completion problems and its business practices for dealing with intermediate carriers. The Board will grant CenturyLink's request for confidential treatment of this information (other than the name of the carrier) pursuant to Iowa Code § 22.7(3).

Paragraph 26: One word is redacted in this paragraph. The word describes the nature of a step CenturyLink took in response to a call completion complaint. The Board will grant CenturyLink's request for confidential treatment of this information pursuant to Iowa Code § 22.7(3). This appears to be competitively sensitive information about the company's response to call completion problems.

Paragraphs 27 – 28: These paragraphs contain information about routes used before and after CenturyLink made a routing change in response to the problems at issue in this proceeding. The redacted materials identify intermediate carriers in the route before and after the change, some of which are not parties to this proceeding, and their positions in the route. In this context, where the redacted materials address the routing positions of the specific intermediate carriers, the identities of the carriers constitute trade secret information about CenturyLink's routing process. The Board will grant CenturyLink's request for confidential treatment of the redacted portions of Paragraphs 27 and 28 pursuant to Iowa Code § 22.7(3).

Paragraph 30: The redacted materials in this paragraph appear to relate to CenturyLink's process for investigating call completion problems and refer to communications from an intermediate carrier. In this context, these materials constitute trade secret information. The Board will grant CenturyLink's request for

confidential treatment of the bracketed material in Paragraph 30 pursuant to Iowa Code §22.7(3).

Finally, OCA's request to remove the confidentiality designation on the redacted material in Paragraph 19 has not been resisted. The Board will grant that request. The Board will also grant OCA's request to remove the confidentiality designations on those parts of the Report for which CenturyLink's request for confidential treatment have been denied.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for confidential treatment filed by Qwest Communications Company, d/b/a CenturyLink QCC, on February 6, 2015, is granted, in part, and denied, in part, as discussed in this order.
2. The information for which confidential treatment is granted shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)(b)(3).
3. Pursuant to 199 IAC 1.9, CenturyLink shall have 14 days from the date of this order to initiate court action to prevent disclosure of the information for which confidential treatment is denied, if it so chooses.
4. The motion to remove confidentiality designations filed by the Office of Consumer Advocate on February 20, 2015, is granted, in part, and denied, in part, as discussed in this order. Within 21 days of the date of this order, Consumer Advocate

shall file revised versions of its Report on Investigation to reflect confidentiality designations based on this order.

UTILITIES BOARD

/s/ Geri D. Huser

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 1st day of July 2016.